

Remarks

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Thus, in response to the rejection of the claims under 35 U.S.C. §112, claim 39 has been amended to insert a step of treating the fruit or vegetable by applying the physical and/or chemical treatment to the fruit or vegetable, and each of claims 56 and 57 has been amended to clarify the ratio of the lecithins and/or derivatives relative to the treatment agent. Claim 44 has also been amended for clarification. Applicant respectfully submits that these amendments will overcome the rejection of the claims under 35 U.S.C. §112.

Applicant takes the position that these amendments should be entered, even though they are being presented after a final rejection. The amendments are submitted for the purpose of overcoming a formal rejection (35 U.S.C. §112), and accordingly, entry of the amendments will not necessitate any further consideration and/or search of the prior art.

The patentability of the presently claimed invention over the disclosures of the references relied upon by the Examiner in rejecting the claims will be apparent upon consideration of the following remarks.

Thus, the rejection of claims 39, 42-43, 46 and 65 under 35 U.S.C. §102(b) as being anticipated by Garcia-Mina et al. (EP '070) is respectfully traversed.

These claims are directed to a method for reducing phytotoxicity caused by physical and/or chemical treatment applied to fruit or vegetable (independent claim 39), and a method for treating a fruit or vegetable which includes a physical treatment by means of heat or cold (independent claim 65). Neither of these methods is disclosed by the Garcia-Mina et al. reference.

Thus, Garcia-Mina et al. merely teach a composition for the control of post-harvest pathologies, including those caused by pathogenic agents, mainly funguses and bacterias, and by chemical degeneration (either scalding and oleocellosis). None of such post-harvest pathologies includes heat or cold recited in claims 39 and 65, or a chemical treatment recited in claim 39.

Further, claim 39 is now reworded so as to recite the concrete steps to be taken to carry out the method of the invention and thereby achieving the phytoprotective effect exerted by the method. More precisely, the method of the invention comprises:

- treating the fruit or vegetable by applying a physical treatment (cold or heat) and/or a chemical treatment (selected from the agents specified in claim 39); and
- applying a composition comprising lecithins and/or derivatives to said fruit or vegetable.

This incorporates a manipulative difference between the claimed method and the disclosure of Garcia-Mina et al., which fails to disclose the above two distinctive steps and the phytoprotective effect thus achieved.

For these reasons, Applicant takes the position that the presently claimed invention is not anticipated by the Garcia-Mina et al. reference.

The rejection of claims 40-41 and 45 under 35 U.S.C. §103(a) as being unpatentable over Garcia-Mina et al., as well as the rejection of claims 47-64 and 66-71 under 35 U.S.C. §103(a) as being unpatentable over this reference in view of Schur (U.S. '551) and the rejection of claims 39 and 42-44 under 35 U.S.C. §103(a) as being unpatentable over Mulder (U.S. '826) in view of Garcia-Mina et al., are respectfully traversed.

None of these references provides any suggestion to carry out a method comprising the above two distinctive steps of treating the fruit or vegetable by applying heat or cold or a specified chemical treatment as recited in claim 39, and applying a composition comprising lecithins and/or derivatives thereof to the fruit or vegetable, nor do the references suggest the phytoprotective effect thus achieved.

In particular, it would appear that the Examiner has not considered the unexpected effect of the claimed method, namely its capacity to reduce phytotoxicity of physical and/or chemical treatment.

In this regard, please see the attached Declaration from the inventor, Mr. Sardo, with experimental results showing the unexpected effect of the method of the invention:

- to reduce phytotoxicity caused by physical treatment (heat and cold)

- to reduce phytotoxicity caused by chemical treatment (eugenol and calcium chloride) by means of applying a composition comprising lecithins (either in an oil based or in an aqueous base).


There is absolutely no suggestion in any of the references which would lead one of ordinary skill in the art to expect that these results could be achieved by the method of the presently claimed invention.

For these reasons, Applicant takes the position that the present invention as claimed is clearly patentable over the applied references.

Therefore, in view of the foregoing amendments and remarks, it is submitted that each of the grounds of rejection set forth by the Examiner has been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

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June 3, 2009